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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,368	11/06/2001	David A. Luce	LOIP:101_US_	5569

7590 06/02/2005

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EXAMINER

FOREMAN, JONATHAN M

ART UNIT PAPER NUMBER

3736

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

58

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/992,368	LUCE, DAVID A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jonathan ML Foreman	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/8/02</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Invention I and Embodiment I in the reply filed on 2/14/05 is acknowledged.

### ***Information Disclosure Statement***

The information disclosure statement filed 2/8/02 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. It has been placed in the application file, and the information referred to therein has been considered by the examiner as to the merits.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Page 3, line 3 and Page 8, line 28 make reference to a U.S. Patent but fail to include a Patent No.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,770,181 to Tomoda.

In regards to claims 1, 2 and 5, Tomoda discloses a non-contact tonometer (Figure 1) including a fluid discharge tube (37); a cylinder (10) having a primary port (31) and an exhaust port (16); and a piston (26) displaceable along an axis relative to the cylinder from an initial position, the piston and the cylinder defining a plenum chamber (14) in communication with the discharge tube

Art Unit: 3736

(37) through the primary port; wherein the exhaust port (16) is sealed until the piston has forced a predetermined volume of fluid from the chamber through the primary port (Col. 6, lines 6 – 25), thereafter the exhaust port (16) becomes unsealed such that the chamber develops an leak through the exhaust port (Col. 6, lines 44 – 57). The chamber transitions from being in exclusive communication with the discharge tube to being in non-exclusive communication with the discharge tube as the piston moves beyond a predetermined displacement position relative to the cylinder (Col. 6, lines 44 – 57).

5. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,947,898 to Suzuki et al.

In regards to claims 1, 2 and 5, Suzuki et al. discloses a non-contact tonometer (Figure 1) including a fluid discharge tube (6); a cylinder (1) having a primary port and an exhaust port (33, 35); and a piston (2) displaceable along an axis relative to the cylinder (1) from an initial position, the piston and the cylinder defining a plenum chamber in communication with the discharge tube (6) through the primary port (Col. 2, lines 35 – 38); wherein the exhaust port (33, 35) is sealed until the piston has forced a predetermined volume of fluid from the chamber through the primary port (Col. 6, lines 25 – 31), thereafter the exhaust port becomes unsealed such that the chamber develops an leak through the exhaust port (Col. 6, lines 33 – 42). The chamber transitions from being in exclusive communication with the discharge tube to being in non-exclusive communication with the discharge tube as the piston moves beyond a predetermined displacement position relative to the cylinder (Col. 6, lines 33 – 42).

6. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 63283621 A to Umadata.

In regards to claims 1, 2 and 5, Umadata discloses a non-contact tonometer (Figure 1) including a fluid discharge tube (8); a cylinder (5) having a primary port and an exhaust port (12); and a piston (4) displaceable along an axis relative to the cylinder (5) from an initial position, the piston and the cylinder defining a plenum chamber (6) in communication with the discharge tube through the primary port; wherein the exhaust port is sealed until the piston has forced a predetermined volume of fluid from the chamber through the primary port, thereafter the exhaust port becomes unsealed such that the chamber develops an leak through the exhaust port (Abstract, Constitution, lines 9 – 16). The chamber transitions from being in exclusive communication with the discharge tube to being in non-exclusive communication with the discharge tube as the piston moves beyond a predetermined displacement position relative to the cylinder (Abstract, Constitution, lines 9 – 16).

7. Claims 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,876,189 to Lukas et al.

In regards to claims 3 and 4, Lukas et al. discloses a fluid pump (Figure 1) including a fluid discharge tube (FO), the pump includes a cylinder (2) and a piston (10) displaceable relative to the cylinder, the cylinder having an inner tubular part (14) and an outer tubular part (2) for receiving the inner tubular part, wherein a volume of fluid delivered in the pulse is metered by axially adjusting the inner and outer tubular parts relative to one another (Col. 4, lines 62 – 66). Lukas et al. discloses a metering adjustment drive (20) connected to the inner tubular part for axially moving the inner tubular part relative to the outer tubular part.

Art Unit: 3736

***Allowable Subject Matter***

8. Claims 6 – 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JMLF



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